



GLOBAL EXPANSION GUIDEBOOK EMPLOYMENT

Austria



Downloaded: 12 May 2025

INTRODUCTION

Welcome to the 2024 edition of DLA Piper's *Global Expansion Guidebook – Employment*.

GLOBAL EXPANSION GUIDEBOOK SERIES

Many companies today aim to scale their businesses globally and into multiple countries simultaneously. In order to help clients meet this challenge, we have created a handy set of global guides that cover the basics that companies need to know. The *Global Expansion Guidebook* series reviews business-relevant corporate, employment, equity compensation, intellectual property and technology, and tax laws in key jurisdictions around the world.

EMPLOYMENT

As business grows more global, the challenge for in-house counsel and HR professionals responsible for workforce issues and employment law compliance is intensifying. This guide is designed to meet that challenge head on and has been produced in response to feedback from clients in both established and emerging international businesses. We hope it will become an invaluable resource for you.

This 2024 edition of our popular guide covers all of the employment and labor law basics in 63 key jurisdictions across the Americas, Asia Pacific, Europe, the Middle East and Africa. From corporate presence and payroll set-up requirements, language rules, minimum employment rights, business transfer rules, through to termination and post-termination restraints, we cover the whole employment life span.

We have used our global experience and local knowledge to bring you this newest edition of our guide. With over 300 lawyers, DLA Piper's global Employment group is one of the largest in the world, with one of the widest geographical footprints of any global law firm. We partner with our clients, wherever they do business, to find solutions and manage risk in relation to their legal challenges and objectives.

While this guide provides high-level guidance, it is not a substitute for legal advice, and we encourage you to take advice in relation to specific matters. If you wish to speak to any of our contributors, their contact details are set out towards the back.

We hope that you find this guide valuable and we welcome your feedback.

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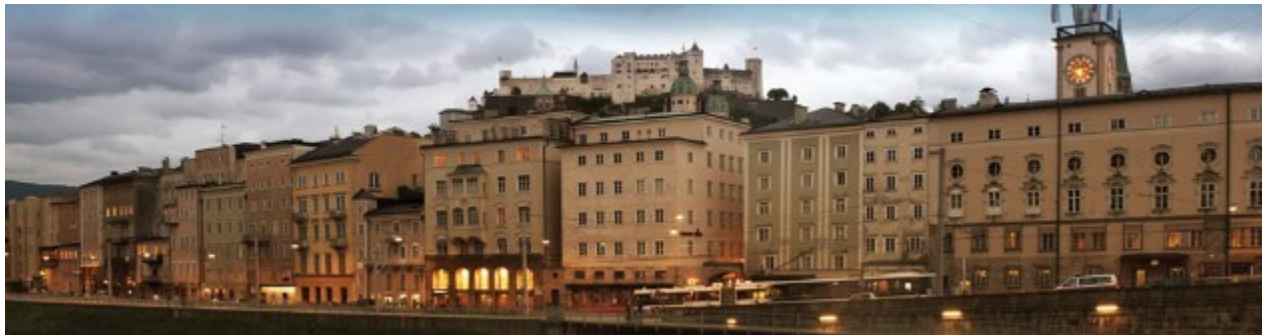
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This is a general reference document and should not be relied upon as legal advice. The application and effect of any law or regulation upon a particular situation can vary depending upon the specific facts and circumstances, and so you should consult with a lawyer regarding the impact of any of these regimes in any particular instance.

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AUSTRIA



Last modified 13 June 2024

LEGAL SYSTEM, CURRENCY, LANGUAGE

Civil law. Member of the European Union (EU), so required to implement relevant EU directives. The official currency is the Euro (EUR). The official language is German.

CORPORATE PRESENCE REQUIREMENTS & PAYROLL SET-UP

A foreign entity may engage employees in Austria with proper payroll registrations, subject to business and corporate tax planning considerations. Withholdings for pay-as-you-earn (PAYE) – that is, social insurance (employer and employee portion), severance payment funds (1.53 percent to a company pension fund, or *betriebliche Mitarbeitervorsorgekasse*, and local taxes) and income tax to be done through payroll.

PRE-HIRE CHECKS

Required

Immigration compliance.

Permissible

Criminal and credit reference checks are only permissible for specific roles (eg, certain finance positions) and subject to proportionality requirements. Reference and education checks are common and permissible with applicant consent.

IMMIGRATION

Nationals of the European Economic Area (EEA) and Switzerland have a right to work in Austria. For other non-Austrian nationals, immigration permission and a work permit are required.

HIRING OPTIONS

Employee

Indefinite, fixed-term, full-time or part-time. Part-time and fixed-term employees have the right not to be discriminated against due to their status.

Independent contractor

Independent contractors may be engaged directly by the company or via a personal services company. Engagement may be subject to misclassification exposure.

Agency worker

Agency workers are common and are either employees or workers. Agency workers have the right to equal treatment to employees in relation to pay and other benefit terms.

EMPLOYMENT CONTRACTS & POLICIES

Employment contracts

Employment contracts are not required per se, but employees must be provided in writing with certain minimum terms defined by Austrian labor law:

- Name and address of the employee
- Name and address of the employer
- Start of the employment relationship
- Termination date if the employment relationship is on a fixed-term basis
- Notice terms
- General place of work, indication of altering workplace
- Job grade
- Job description
- Remuneration or salary
- Annual holiday entitlement
- Hours of work
- Applicable collective bargaining agreement and
- Name and address of the company pension fund

Other than the employment note (“Dienstzettel”) which does not qualify as a contract but serves as a statement of the facts of the employment relationship, a written employment contract is not required, although it is recommended. Accordingly, written contracts are common.

Probationary periods

Generally permissible for the 1st month of employment. Probationary periods of more than 1 month are not permitted. During the probationary period the employment relationship can be terminated immediately by either the employer or employee at any time without observing notice periods and without stating reasons for the termination.

Policies

IT policies regarding the handling of personal data by employees is required under Austrian data protection law.

Third-party approval

No requirement to lodge employment contract or policies with or get approval from any 3rd party.

LANGUAGE REQUIREMENTS

No statutory requirements as long as the employee understands the agreement. However, it is recommended that the agreements be in German (or German and another language in bilingual format). In the latter case, there should be a provision that the German language version is the prevailing. Note: In the event of a legal dispute, the court may demand documents that are not in German to be translated in a certified manner – this may impose additional costs.

WORKING TIME, TIME OFF WORK & MINIMUM WAGE

Employees entitled to minimum employment rights

All employees are entitled to minimum employment rights provided by law. In addition, most employees are entitled to minimum rights provided by the applicable collective bargaining agreement (“Kollektivvertrag”). Since in Austria almost every industry branch has its own collective bargaining agreement, minimum rights may differ (eg , minimum wages, annual leave and working time).

Working hours

In general, normal working time consists of 40 hours a week and 8 hours a day. Most collective bargaining agreements provide for a 38.5-hour week. The maximum working time is 60 hours per week and 12 hours per day, according to applicable law. However, working time may not exceed 48 hours per week on a 17-week average.

Overtime

Working overtime is generally permitted; overtime generally accrues if the normal daily or weekly working time is exceeded. Employers and employees must agree whether the overtime is compensated through payment of a

surcharge or compensatory time off in lieu of payment. Individual agreements for all-in salaries are generally possible, depending on the individual status of the employee. For all-in salaries agreed after December 31, 2015, the employer is obligated to declare which amount of the salary is for the normal working time (ie, base salary) and which is deemed as overpayment for overtime work. The base salary must be at least the minimum wage according to the applicable collective bargaining agreement.

Wages

Mandatory minimum wages provided in collective bargaining agreements, not by law.

Vacation

Employees are entitled to a paid annual leave of at least 5 weeks per working year (on the basis of a 5-day working week, it would amount to 25 working days for each working year). After completing 25 years of service, the paid leave entitlement increases to 6 weeks per working year (on the basis of a 5-day working week, it would amount to 30 working

days for each working year).

Sick leave & pay

Employers are required to provide payment to an employee on sick leave for 6 weeks if the employment relationship has not yet lasted 1 year; 8 weeks if the employment relationship has lasted 1 year; 10 weeks if it has lasted 15 years; and 12 weeks if it has lasted 25 years without interruption; after that period, there is an obligation to pay 1/2 (50 percent) for another 4 weeks.

In case of a work accident or an occupational disease, the employee is entitled to sick payment for 8 weeks. The entitlement increases to 10 weeks of sick payment if the employment relationship has lasted 15 years without interruption.

Note: Once the employee is not entitled to (full) continued payment by the employer, the employee will receive sick pay ("Krankengeld") from the Austrian Health Insurance Fund ("Österreichische Gesundheitskasse" or "ÖGK"). In cases where the employee is entitled to 50 percent remuneration from the employer, they will receive 50 percent of sick pay from ÖGK.

Maternity/parental leave & pay

In general, minimum maternity leave ("Mutterschutz") starts at 8 weeks before giving birth, according to the calculated birth date by a physician, and ends at 8 weeks after birth. The mother is paid a portion of her wages from social insurance in that period (maternity allowance – "Wochengeld"). As long as the mother is entitled to the maternity allowance, the continued payment of remuneration by the employer is suspended. If the employee lives with the child in the same household, they may take unpaid parental leave with the right to return to work until the child's 22nd month of life. If the parental leave will be shared between the parents, the entitlement to parental leave is extended until the child reaches the 24th month of life. The employee is also entitled to parental leave until the child reaches the 24th month of life if the employee is a single parent at the time of notification (eg, there is no other parent, or the other parent does not live in the same household) or the other parent is not entitled to parental leave and the employee notifies the employer of the start of parental leave at the earliest 2 months after the end of the maternity leave.

Within 8 weeks of the birth of their child, fathers are legally entitled to a "daddy month." The daddy month is unpaid by the employer, but the employee receives an allowance (family time allowance - "Familienzeitbonus") from social insurance.

Other leave/time off work

Employees may also be entitled to leave for other purposes, such as adoption and foster leave and caregiver and nursing leave. In addition, educational leave may be agreed upon.

DISCRIMINATION & HARASSMENT

Characteristics protected from unlawful discrimination and harassment include age, disability, gender reassignment, marriage or civil partnership, pregnancy or maternity, race, religion or belief, sex or sexual orientation.

WHISTLEBLOWING

The EU Whistleblower Directive was implemented in Austria through the Whistleblower Protection Act ("HinweisgeberInnenschutzgesetz" or "HSchG") and applies to all entities with more than 50 employees. The HSchG implements the EU-Whistleblower Directive and provides for an extended scope of concerns to be reported and the obligation to implement an internal reporting channel. In some cases (eg, for obstructing and pressuring whistleblowers and for unlawfully revealing their identities) the law provides for administrative fines of up to EUR20,000.

BENEFITS & PENSIONS

Currently, no benefits required above those covered under social insurance contributions.

DATA PRIVACY

Austria has made use of the opening clauses of the General Data Protection Regulation, particularly in the area of labor law. Several different national provisions must therefore be observed, such as the mandatory declaration of data secrecy, retention periods, provisions on the conclusion of works agreements, etc.

RULES IN TRANSACTIONS/BUSINESS TRANSFERS

There is a mandatory automatic transfer of employment relationships under the Austrian rules implementing the EU Acquired Rights Directive in a business sale or service provision change with significant restrictions on

changing terms and conditions following a transfer. Also, the duty to inform and consult with employees and/or the works council, if any applies. Any termination connected to the transfer is void unless for a good reason (eg, termination for economic, technical or organizational reasons).

EMPLOYEE REPRESENTATION

Trade unions (“Gewerkschaften”) are prevalent in almost every sector. Collective bargaining agreements are very common, including industrywide collective bargaining agreements. Every employee in an applicable sector by law is a member of their trade union. Works councils are very common and may be established in every business with at least 5 employees.

TERMINATION

Grounds

No grounds required. In special cases eg, if termination is exceptionally hard for the employee and therefore socially inadequate), the employee may claim unfair termination and reinstatement. Where the termination is deemed socially inadequate, the employer would need business reasons or reasons relating to the employee to justify the termination.

Employees subject to termination laws

Employees with fewer than 6 months' seniority have no unfair termination protection, based on the grounds of social inadequacy.

Prohibited or restricted terminations

Certain employees (eg, pregnant employees, disabled employees and members of works councils) enjoy special protection, and their termination requires prior approval by the competent court or institution.

Third-party approval for termination/termination documents

With the exceptions outlined above, approval is generally not required to implement a termination. If a works council exists, the works council has a right of information and may give a statement. Special documents (eg, termination in writing) are generally not mandatory; collective bargaining agreements or special legal provisions (eg, with respect to trainees) may provide different regulations.

Mass layoff rules

It is mandatory to inform the competent Austrian authorities (Labor Market Service – “Arbeitsmarktservice”) of a mass layoff. That is, if the employer employs between 20 and 100 employees, termination of at least 5 employees; if the employer employs between 100 and 600 employees, termination of at least 5 percent of the employees; and, if the employer employs more than 600 employees, termination of at least 30 employees – triggers an obligation to inform authorities. Termination of at least 5 employees, each older than 50 years, triggers an obligation to inform the competent authorities regardless of the threshold outlined above. Furthermore, redundancy programs must be implemented together with the respective works council.

Notice

For the employer, minimum of 6 weeks' statutory notice to the end of every calendar quarter (possible agreement to 6 weeks to the last and/or 15th day of every month, which is common); additional notice due to seniority. Not required for terminations for cause.

For the employee, 1 month to the end of every month, if not agreed otherwise. Not required for terminations for cause.

Statutory right to pay in lieu of notice or garden leave

There is no statutory right to payment in lieu of notice unilaterally. However, it can be mutually agreed between employer and employee. In contrast, an employer may place an employee on garden leave unilaterally but has to pay any remuneration that the employee would have earned if they had continued to perform work.

Severance

Two systems of statutory severance pay exist in Austria. Generally speaking, one applies to employment contracts commenced before January 1, 2003 (old severance pay). The other system is applicable for employees with a starting date after January 1, 2003 (new severance pay). The difference between the 2 systems is that, within the old regime of statutory severance pay, the employee has a direct claim against the employer, unless an employee terminates the employment relationship or is dismissed for cause. Within the new severance pay, every month during employment, the employer is obliged to pay 1.53 percent of the gross salary to an external company pension fund (*betriebliche Mitarbeitervorsorgekasse*). The employee then has a severance right against that fund, but there is no additional severance payable by the employer.

POST-TERMINATION RESTRAINTS

Those that protect the employer's legitimate business interests may be enforced if reasonable. Garden leave is common for senior employees.

Non-competes

For special employees with a higher income permitted (in 2024, at least EUR 4,040 gross per month), but not longer than 12 months. If the non-competition clause is valid and enforceable (depending on if (i) the employee terminates the employment, if (ii) the employment relationship has been terminated by the employer for good reason with immediate effect or if (iii) the employee has terminated the employment with immediate effect without good reason), there is no requirement for payment during the non-competition period. If it is not enforceable (eg, if the employer terminates the employment without good reason), the employer may pay the salary during the non-competition period in order to make the non-competition clause enforceable.

Customer non-solicits

Permissible in narrow circumstances.

Employee non-solicits

Permissible.

WAIVERS

Not enforceable for the future with respect to statutory rights. With respect to rights already accrued, Austrian courts usually are of the opinion that employees may not waive them.

REMEDIES

Discrimination

Compensation based on the claimant's financial loss and injury to feelings as well as recommendation that the employer takes action.

Unfair dismissal

Claim for reinstatement of the employment agreement. Alternatively, compensation based on the claimant's financial loss as a result of the employer having failed to give proper notice.

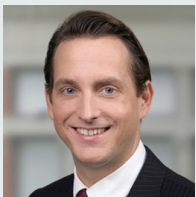
Failure to inform & consult

Nullity of termination if information of work council or an authority is required.

CRIMINAL SANCTIONS

Criminal sanctions are not generally a concern.

KEY CONTACTS



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